

TOWARDS A WORLD TRANSNATIONALS' ORGANISATION?

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The year 1998 marks 50 years of the global trading system under GATT and World Trade Organisation (WTO). Celebrations take place at the second bi-annual Ministerial Conference from 18th to 20th May 1998 in Geneva. At the same time, renegotiations are being prepared due to start in the year 1999 or 2000. The EU Ministers already expressed their support for a so-called 'Millennium Round' which might introduce new areas into the WTO, such as an agreement to liberalise investment.

Citizen groups and non-governmental organisations (NGOs) see little reason for celebration. The Ministerial Conference and preparations for the new negotiations are being conducted in the WTO's usual nontransparent way, without consultations with citizens. Their concerns that free trade and investment only benefit a few and contribute to environmental destruction, are not taken into account. However, the views of business, especially from transnational corporations (TNCs), are well reflected in the WTO decisions. Two-thirds of world trade is conducted by one or more TNC. This booklet explains how TNCs easily influence decision-makers and succeed. It does not tell the full story but indicates that business plays a crucial role in globalisation. Decision-makers pretend to act in the interest of all.

It cannot start without new negotiations about the role and impact of business in a globalising world. There are many ways to redress the imbalance of business interests, a challenge facing us in the coming 50 years.

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TABLE OF CONTENTS

Preparing for the next 50 years

Channels of influence

- Close ties in the US and Japan
- Influence at different levels
- Exclusive channels for TNCs

Areas of influence

- Shaping the rules
 - Uruguay Round Negotiations
 - The Information Technology Agreement
- Implementation
- Setting the new agenda
 - Liberalising investment
 - Competition policy
- Negotiation for accession of new members
- Settling disputes
- Challenges in bio-technology

Recommendations

PREPARING FOR THE NEXT 50 YEARS

As the World Trade Organisation conducts its second bi-annual Ministerial Conference from 18th to 20th May 1998 in Geneva, it also celebrates 50 years of the global trading system.

While it is the 132 member countries who are responsible for decision-making across the WTO's organisational bodies, it is the private sector who conducts the actual trade and who is increasingly influencing the policy positions of member countries. For the very large firms, the multinationals and trans-national corporations (TNCs), the WTO is a very important domain of trade jurisdiction and a crucial determinant of the extent to which they are able to operate unhindered. An analysis on the role of TNCs in the WTO is absent in the WTO's own trade policy review mechanism and annual reports of international trade.

In 1997, the WTO reported that world trade in goods reached \$ 5.3 trillion, and trade in services an additional \$ 1.3 trillion. The United Nations Conference on Trade and Development (UNCTAD) figures indicate that:

- more than two thirds of world trade involves at least one multinational, half of which occurs within the same multinational around the world (intra-firm exports);
- with an estimated \$7 trillion in global sales in 1995 - the value of goods and services produced by some 280,000 affiliates of the world's 44,500 TNCs - international production outweighs exports as the dominant mode of servicing foreign markets;
- TNCs were responsible for the \$ 350 bn in foreign direct investment in 1995.

These figures reflect the fact that corporations having a global outreach through their subsidiaries or corporate partnerships, are better positioned to take advantage of international trade than are smaller unaffiliated companies. TNCs are structured to form global trade strategies which position them to take most advantage.

The enormous interest that TNCs have in the WTO is expressed through the growing influence over decision-makers on all WTO matters, which surpasses that of citizens and non-profit non-government organisations. Thus, the aim

this booklet is to examine how TNCs influence WTO decision-making and effect policy outcomes. This issue is particularly important in the context of upcoming events in the WTO.

The Ministerial Conference in May 1998 is important in the lead up to renegotiating the agreement in agriculture which is scheduled for the end of 1999. Although the Conference avoids to take decisions, it will face the renegotiation of the WTO agreement on services and the review of the agreement on investment measures (TRIMs) as well as TRIPs scheduled for 2000. The scheduled review in 1999 of Art. 27.3 (b) of the agreement on trade related intellectual property rights (TRIPs), providing exception on patenting of life forms, is hardly on the agenda.

The decision to conduct a new 'round' of negotiations revising many trade sectors simultaneously may be raised and could lead to WTO involvement in new areas - such as a new agreement on investment and competition rules. This potential round of negotiation has been dubbed the 'Millennium Round' - a phrase coined by Sir Leon Brittan, the trade Commissioner of the European Union, and vociferous supporter of the idea.

In March 1998, European Union Ministers agreed that they wanted the 1998 Ministerial Conference to set in train [a] thorough and wide ranging groundwork which would cover all potential areas of future negotiation in order to be ready for the Millennium Round to begin in 2000. They intend all contracting parties to pledge their commitment to the negotiations. A final decision is expected to be taken at the WTO Ministerial Conference in 1999.

The EU Ministers intend to send a strong message to public opinion explaining the advantages and benefits of further liberalising trade. But it is important to ask to what extent benefits of trade liberalisation would be skewed in favour of TNCs, the main private actors in trade, and disadvantage the wider, national and local economies and communities.

CHANNELS OF INFLUENCE

The 1948 General Agreement on Tariffs and Trade (GATT), upon which the WTO was built, was originally equipped to deal solely with reducing tariffs and adopted

a very technical and narrow industrial approach. Since, national and regional administrations have not developed the methodology or capacity to evaluate the wider impacts of the trade agreement upon their societies. They have often employed narrowly focused macro-economic models of free trade to assess and restructure their economies, and to form the basis of government policy on foreign affairs and trade.

This pattern persists despite the WTO having developed its jurisdiction well beyond the area of tariff reduction. The WTO now covers a wide range of sectors with implications for most aspects of life, for example, in the area of intellectual property rights (bio-technology), agriculture (food), the services industry (transport) and telecommunications.

Trade rules play a crucial role in the capacity of a company or corporation to gain or lose in the market, and to serve its aim of achieving higher profits. For TNCs, trade and investment rules determine their freedom to move freely around the globe making use of the cheapest labour and production, playing suppliers off against each other, achieving economies of scale, and locating the largest and most lucrative markets. They have successfully promoted trade rules which protect their interests. For example, the TRIPS Agreement protects intellectual property rights in all WTO member countries and obstructs the production of imitation products. Some calculations show that up to 90% of technology and product patents in the world are owned by TNCs. The TRIMs (Trade Related Investment Measures) Agreement led to the outlawing of investment measures by host governments which had been an obstacle to TNCs by imposing local content requirement and restricting the repatriation of profits.

In order to understand how national policy on trade is reached, we need to examine the demands of TNCs on governments, and the methods by which they convey these. This will allow an insight into how these demands are met and how new rules can be made at the expense of the wider national and international community and the environment. In an effort to redress the absence of research in this area, this booklet explains some of the channels of influence utilised by TNCs and provides a few examples of their effects.

The modes by which businesses convey their preferences, and persuade policy-makers to support them are both formal and informal as well as direct and indirect.

Close ties in the US and Japan

The link between the private sector and the formation of trade policy is closest and most visible in the US and Japan. In the EU, it is less institutionalized.

- In the US, the Department of Commerce - International Trade Administration identifies its primary aim to be ... dedicated to helping US businesses compete in the global marketplace... Formal consultative committees exist between the administration and different sectors of business and serve as a channel through which US business and TNCs indicate their interests. An example is the President's Advisory Committee for Trade Policy and Negotiations which gives recommendations on US trade policy. Members of the Committee include representatives of TNCs such as American Telephone & Telegraph Company (AT&T) and associations of TNCs such as the Motion Picture Association of America, Inc. (Hollywood). Of the 42 members, around 19 belong to TNCs such as Monsanto, Eastman Kodak and IBM. The Committee has subcommittees on different sectors where these representatives can more clearly let their voice being heard and put their positions in reports.

United States based TNCs also communicate directly with officials and decision-makers in the EU and other countries, or indirectly through business organisations by which they are represented.

- In Japan, the links between the private sector and government officials are institutionalised through Keidanren, the Japan Federation of Economic Organisations which represents the Japanese business community. It keeps close contact with the government and economic policy makers. Among its chief purposes are: presentation of proposals to the Diet and the government on issues of economic administration, legislation and policy revision, and maintaining close contact with overseas economic organisations. It regards the WTO as a crucial instrument to promote future economic growth.

The Keidanren houses various policy committees in which TNC representatives act as Chair. One such example is the Committee on

Trade & Investment which is chaired by the President and Chief Executive Officer of Mitsubishi Electric Corporation. Another is the Committee on Environment and Safety which is chaired by the Chairman of Nissan Motor Co., Ltd. The Chairman of the Committee on Comprehensive Strategy is the Chairman of the Board Toyota Motor Corporation.

- In the case of the European Union (EU), the European Commission or EC (a special think-tank and executive body of the EU) has the right of initiative in trade matters. That is, no EU member can implement trade policies independently of the Union. The contacts between the EC and business does not appear to be as formal and structured as in the US and Japan. The Commissioner responsible for WTO policies and administration primarily maintains contact via conferences organised by business organisations, meetings with business associations such as the ERT (see below) and UNICE, or with individual business people. During the Uruguay Round, the contacts between the negotiators and business were very close. This seems to have remained so in the subsequent WTO negotiations as reported by the EC Commissioner for trade on the negotiations on financial services.

The Union of Industrial and Employers Confederations of Europe (UNICE) is the umbrella organisation for all employers in the EU, big and small, and the official representative body of the European business and industrial community. However, the interests of the larger companies can often prevail in areas such as trade and investment. UNICE has frequent contacts with the EC either via phone calls or visits made by its officials. It closely monitors the EC's initiatives in trade and responds by, amongst other methods, submitting the reports of its working groups (made up of employers representatives) and releasing press communiques on WTO issues before decisions are taken.

Given that the Ministers of the EU have to direct the EC on negotiations with the WTO, the different contacts of the private sector with politicians and trade policy-makers at the national level affect the EU's decisions on trade overall (see ERT).

Influence at different levels

The most direct way in which businesses and TNCs can advance their interests and ensure their incorporation in the WTO is through participation in 'expert

meetings' which are integral to negotiations, or attending WTO Ministerial conferences as part of a national delegation. More informally, lobbyists of sectoral business associations and TNCs meet negotiators before and after WTO negotiation sessions, and representatives of individual TNCs often meet with trade officials. Some TNC representatives meet with staff of the WTO Secretariat who have a mostly indirect influence on the WTO decision-making process, with the exception of the Director General who personally addresses business conferences.

There are also many indirect contacts and influences between business and politicians which can facilitate support for TNC positions. The enormous role TNCs can play in a nation's economy can make their host government a very accommodating and attentive audience. Smaller businesses cannot carry the same weight.

The boundaries between government and big business can become blurred by the participation of politicians on company boards and advisory committees. In the reverse, former employees and entrepreneurs who engage in a political career can, by doing so, create a channel of informal influence.

TNCs have the capacity to engage in expensive public relations and advertisements. For instance, they advertised in major business reviews and newspapers in favour of the completion of the Uruguay Round, and on one occasion, in answer to a newspaper article which opposed their views. Donating to political parties and election campaigns is another lobbying method which can have a direct influence on voting and therefore, policy outcomes. During the Uruguay Round, US analysts tried to predict how Congress would vote at the end of the negotiations by identifying which position was held by which TNC, and to which party they had made donations.

The influential role of BIAC, the Business and Industry Advisory Committee to the OECD, should not be underestimated. The OECD - Organisation for Economic Cooperation and Development - often shapes the position that the richer countries adopt in the WTO. The International Chamber of Commerce and TNCs plays an important role in BIAC.

Exclusive channels for TNCs

Given that traditional lobby instruments can be too cumbersome and indirect to represent their interests in the global economy, TNCs have formed a few tools of their own which are geared towards their interests in a global free-market.

- The International Chamber of Commerce (ICC) calls itself the World Business Organisation for promoting international trade, investment and the global market economy system, and rules governing the conduct of business across borders. The ICC covers 7000 member companies and associations from over 130 countries and ensures that business concerns are brought to the attention of governments in a coordinated way via its international Secretariat in Paris.
- It has access to the highest decision-makers and staff from the World Trade Organisation (WTO), the Organisation for Economic Co-operation and Development (OECD) and the UN. Many ICC members are TNCs such as Nestl• (chair) and their views predominate in the ICC's policy positions.
- Since its creation in 1983, the European Round Table (ERT) has contributed significantly to an improved dialogue between TNCs and governments, at both national and European levels. It consists exclusively of the Chief Executives (CEOs) of a number of TNCs based in Europe such as Philips, Bayer, Unilever and Nestl• (chair). The ERT's powerful constituency gives it informal as well as formal access to the highest ranking decision-makers including prime ministers and the German Chancellor.

It makes its views well heard at the national and European levels by means of short and authoritative reports, position papers and face-to-face discussions. The ERT claims to have contact with the EC, the Council of Ministers and the European Parliament as well as many international organisations such as the WTO. Every six months, the ERT meets Ministers of the government holding EU presidency. At the national level, each Member keeps in personal contact with decision-makers, parliament, business colleagues, industry organisations and the press. It also works with the ICC, TABD and UNICE.

Research into the ERT demonstrates the considerable influence on European policy and decision-making, and further, that its adopted position on the WTO is reflected in EU trade policy.

- The TABD, the Transatlantic Business Dialogue, describes its function as an informal process whereby European and American companies and business associations develop joint EU-US trade policy recommendations. Working together with the European Commission and US Administration they help shape US-EU trade policy including in the WTO. It is a unique process, driven by business leaders, because, it claims, of the personal involvement of CEOs working closely with the highest levels of government from the EU and US. It is not an organisation, but a framework drawing on the resources of existing companies and organisations, to deliver joint industry messages. The results are considered much more efficient than the traditional structures for government-business consultation.

During 1998, the TABD is co-chaired by the CEO of Daimler Benz (for Europe) and the President of Warner-Lambert (for the US). The United States and EU businesses form working groups and produce reports which are then used to inform policy-makers. The Working Group on Global Issues addresses issues arising in the WTO such as, services negotiations, the Information Technology Agreement (ITA), government procurement, intellectual property, investment and competition. ITA meetings are chaired by representatives from Olivetti and Compaq.

Further consultation and lobbying occurs at a yearly conference which brings together CEOs and senior-level government representatives, including the highest level decision-makers such as the WTO Director-General and the EC Commissioner for Trade. This unique combination of CEOs and senior government representatives have proved to provide an unprecedented opportunity to achieve breakthroughs on challenging issues. The US and EU co-chairs of the TABD participated in the EU-US Summit in The Hague in May 1997 with President Clinton, European Commission President Santer and Dutch Prime Minister Kok. The TABD representatives formally presented the 1997 TABD Priorities Paper which the political

leaders regarded as useful building blocks and inspiration to explore further possibilities of liberalising trade and investment flows.

- The United States Council for International Business (USCIB) has a membership of over 300 multinationals, law firms and business associations. It constitutes a special pressure group that promotes the interests of US TNCs in different ways to the US Government and to such intergovernmental Organisations as the OECD, the WTO, and different UN bodies with which its international affiliates have official consultative status. It is the American affiliate of the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee (BIAC) to the OECD. The USCIB formulates its positions in over forty committees and other working bodies composed of corporate and other experts drawn from its membership.

In preparation of the 1998 WTO Ministerial Conference, it issued a statement with detailed recommendations for the WTO Conference and urged for action in areas such as TRIPs, services and the upcoming agricultural negotiations with the objective of promoting an open system of world trade, finance, and investment.

- TNCs are linked with some other exclusive clubs where they discuss their positions and meet politicians at the highest level. WTO issues feature often on their agenda and these meetings can informally influence WTO policy-making, such as by:
 - ❑ the World Economic Forum in Davos (Switzerland) where chief executives of over 1000 TNCs, trade and economic ministers or even prime ministers, top political and corporate decision-makers and big media representatives meet annually and informally discuss global issues and business contracts. It played a role in the beginning of the eighties in launching the Uruguay Round.
 - ❑ the World Business Council on Sustainable Development constitutes a coalition of 125 TNCs and plays a crucial role in setting a business strategy to handle the challenge from environmental problems in different world organisations and from public criticisms.

AREAS OF INFLUENCE

The influence of business and, in particular, TNCs is apparent throughout the WTO. It is not yet possible to assess how far TNCs have gone toward coupling their interests to the WTO's agenda, but it is possible to describe some clear examples.

Shaping the rules

- Uruguay Round Negotiations

The launch of a new round of negotiations in the GATT in 1986 was very much the result of successful lobbying by TNCs, especially those from the US. American service industries supported the idea that a new services trade regime should underpin any new agreement, and were the driving force in this debate leading up to the Uruguay Round (1986 to 1994). To this end, they formed the Coalition of Service Industries. TNCs such as Federal Express, the then Citibank/Citicorp and American Express were very dynamic in their push for a services agreement that would open up for trading as many countries as possible. One of the most active service-industry advisors to the US Trade Representative (USTR), was Arthur Andersen & Co, the accountant and consulting firm which at the time of the negotiations, in 1989, was already operating in 54 countries and conducted 40% of its business overseas.

Developing countries had fiercely opposed the introduction of new issues to the Uruguay Round, and had first refused a discussion about services. They reasoned that their relatively weak service industries would suffer if exposed to competition, and that instead they required the same government protection - e.g. through procurement and trade barriers - under which the service industries in rich countries had developed.

On the European side, the EC argued the importance of trade in services in which EU businesses have a very strong position. Faced with the US position, driven by demands from the US TNCs, the EC asked the European service industries to co-ordinate and present their position to the EC. No consultation with other industry or community sectors was conducted on this issue.

The US and the EU were able to proceed with negotiating in the Uruguay Round

by offering a concession for developing countries to separate negotiations on services from negotiations on trade in goods. However, the American service industries were able, at the end of the negotiations, to achieve their original aim to link these in the sanction mechanism. This enables them to retaliate against goods of countries with no foreign service industry, should they breach the services agreement. In the end, the Uruguay Round Agreements on trade in goods and trade in services (GATS) were both put under the administration of the WTO, and 'cross-retaliation' is now possible.

At the times when the Coalition of Service Industries regarded the negotiations as unsatisfactory, they expressed the preference for no agreement over a bad agreement. The US also demonstrated this preference when they refused to conclude an agreement on financial services in the Uruguay Round and later to sign onto a first financial services agreement negotiated after the Uruguay Round talks had closed. Once developing countries, such as Korea and Malaysia, that had been identified by Citicorp/Citibank and other American TNCs as the fastest-growing markets had made pledges to sufficiently open their markets, did the US sign up to the second agreement in financial services at the end of 1997. The US used such enormous pressure, including bilaterally, on these countries that even the EU had not been willing to exerted.

The so-called trade related intellectual property rights became another central element of the Uruguay Round. These negotiations culminated in the TRIPs agreement although developing countries had strongly opposed its inclusion in the Round. Recently, the UNCTAD Secretary-General Ricupero, a former GATT negotiator for Brazil, identified the friendship between the then US President Reagan, a representative from Hollywood, and the US Pharmaceutical Association, as being important to the issue. This was to be the initial step toward intellectual property rights becoming part of the Uruguay Round agreements. Both parties were committed to preventing countries from producing imitation products at a lower cost domestically.

In conjunction with other TNCs, including some specialising in bio-technology, they worked toward reinforcing their stronghold on patented knowledge in all countries party to the GATT and the WTO. Calculations show that up to 80% of technology and product patents in developing countries are owned by TNCs which use product patents as a tool for stifling competitors.

Privately, negotiators acknowledge that the TRIPs Agreement was to a great extent driven by TNC interests. TNC representatives were closely linked with US negotiators, and even supplied sections of the draft TRIPS agreement. This perhaps explains how attempts by others for stronger competition rules against abuse of monopolistic positions were systematically buried.

When it became clear, during the final years of negotiations, that farmer lobbies could derail the Uruguay Round, the business lobby mobilised. In Europe, for instance, more than 100 business leaders from UNICE took the matter to the EC's top trade official and pushed for negotiations to be concluded at the Ministerial Conference in 1990. All along, UNICE remained in close contact with the EC and reasserted its call for the finalising of the Round. Meanwhile, the ERT pressured government leaders in face-to-face meetings for the conclusion of the Round, opining that securement of the deal, at whatever cost, would benefit the whole of European Business. B.A.T.

Industries even went so far as to put an advertisement in *The Economist* reiterating the point that it was imperative that the current Round be completed, and that problems in agriculture (which accounts for only 3% of European GDP) should not stifle growth in services (which amount of over 50 % [of GDP]). The ICC, also representing the largest TNCs, has for many years actively sought trade deregulation through the Uruguay Round. To illustrate their level of access, their statement in favour of finishing the Round was formally circulated by the GATT Secretariat at some point in the Uruguay Round negotiations. This was reportedly the result of the former friendship between the then Director-General of Sutherland, and the then President of the ICC.

In order to ratify the Uruguay Round in Houses of Parliament, the business and TNCs applied their next round of lobbying and influencing.

● **The Information Technology Agreement**

Recent negotiations in the WTO are again in response to the of TNC lobby. The Information Technology Agreement (ITA), finalised in 1997, took a large step towards conclusion during the Singapore Ministerial Conference (December 1996). In her opening speech, the US Trade Representative Charlene Barchefsky made it clear that the US was very interested in reducing tariffs on information technology

products. Although the review of the implementation of the Uruguay Round agreements was to be a major theme of the Conference, the US and EU delegation focused on reaching an agreement among themselves to reduce tariffs on information technology, and then set about convincing other reluctant countries to join them. The US delegation contained business representatives among a range of other interest groups. Meanwhile, AT&T and other TNCs have also been seen active behind the scenes in Singapore. Business associations and their business representatives were allowed to receive observer status as a non-governmental organisation (NGO). Before and after the Ministerial, they lobbied successfully

Implementation

One of the primary tasks of WTO members is to review the implementation of the WTO rules. They narrow this task by monitoring to what extent member countries, but not TNCs, apply WTO rules. Given that it is the TNCs who are the major traders, and that their movements go unreviewed by the WTO, current methods of compliance monitoring are not comprehensive. There is very little information publicly available about how the WTO rules were used in corporate strategy, restructuring industry sectors and market concentration, or how they contributed to profits, losses and taxable revenue as part of the billion \$ gains that were promised at the end of the Uruguay Round. It remains unquantified to what extent the WTO has influenced the current merger-mania and restructuring and the massive impact these have had on labour.

In the US, the President's Advisory Committee for Trade Policy and Negotiations took a close look at the progress already made in implementing the Uruguay Round agreements, the prospects for continued implementation, and the operations of the WTO. In 1996, the ACTPN offered a report (Recommendations on US Trade Policy) to assist the US Government in making these assessments and planning for the future, including the agenda and preparations for the December 1996 Singapore Ministerial.

The influence of TNCs is strongly felt where the US Administration continued its commitment to aggressively enforce the protection of intellectual property, which has been improving in part as a result of accelerated implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The Administration continuously pressures other countries, by every means available, for their compliance in measures to protect intellectual property rights and in accelerating the implementation of the TRIPs agreement. The Administration's commitment to this end results from close consultations with affected industry groups and Congressional leaders. In 1995, US firms received an estimated \$ 27 billion in royalties and license fees, accounting for 56% of total global receipts, compared with \$ 6 bn and 50 % in 1983.

Setting the new agenda

Ministers from WTO member-countries decided at the 1996 Singapore Ministerial Conference to set up three new working groups: on trade and investment, on trade and competition policy, and on transparency in government procurement. They also instructed the WTO Goods Council to look at possible ways of simplifying trade procedures, an issue sometimes known as trade facilitation which had been promoted by the November conference of the Transatlantic Business Dialogue.

The decisions to create these working groups were a compromise between the developed countries' wish to negotiations in these new areas, and developing countries which wanted no negotiations beyond what had already been agreed. In the rush to bring new issues to the negotiating table, the influence of TNCs can be visible.

• Liberalising investment

On trade and investment, the Uruguay Round had agreed ('built-in agenda') to review before the year 2000 its agreement on trade-related investment measures (TRIMs). It was further agreed to discuss whether provisions on investment and competition policy should be included in the agreement. However, a long coordinated effort by the International Chamber of Commerce (ICC) for liberalising investment succeeded in starting negotiations for a multilateral agreement on investment (MAI) in the OECD in 1995.

Nevertheless, the European Round Table (ERT) remained persistent in its preference that the strategy behind negotiations on investment should take place in the WTO. Incidentally, the EC Commissioner for the WTO, Sir Leon Brittan backed

a Multilateral Investment Agreement (MIA) in the WTO. He raised the issue onto the agenda of the Singapore Ministerial Conference with a view to prompting future negotiations.

The ERT further proposed a structured debate on strategy and concepts for a global agreement on investment at the Ministerial Conference in 1998 and was hopeful to get a rapid conclusion of an agreement of the new kind.

The commitment by EC decision-makers to work towards an investment agreement in the WTO was supported by the EU Ministers in their conclusions of March 1998. It is worth noting that the ERT also has direct contact with leaders from developing countries, whose opposition to a WTO investment agreement they work hard to mellow. To this end, in 1997, sixteen CEOs of the ERT (including from Nestlé, Shell and British Petroleum) met developing country ambassadors in Geneva during a meeting co-organised by UNCTAD. The latter is regarded by Third World Countries as the right forum to discuss investment issues. During the WTO High Level Meeting on the Least Developed Countries, the Chairman from Nestlé, who has been chairing both the ERT and the ICC, was invited to address the Meeting on the issue of investment.

In a statement delivered directly to the leaders of the richest countries (G-7) in Denver 1997, the ICC declared itself in favour of changes to the international rules for cross-border investment in the WTO. The WTO should be shifted, it said, away from its traditional focus on trade and toward international rules for doing business on a global scale following the conclusion of the MAI negotiations. However, the USCIB, the US arm of the ICC, argued that major objective of the US was to have a number of key non-OECD member countries to join the MAI before beginning negotiations on investment in the WTO.

Until the beginning of 1998, the chances were very high that the US TNCs would have had their way in the OECD. But the WTO Ministerial Conference in May 1998 might pave the way for rules on liberalising investment to be introduced to the WTO for negotiations in 2000 while the currently troubled MAI negotiation might not have succeeded in the OECD.

● Competition policy

Competition policy rules include measures to prevent companies abusing their dominant market positions through, for example, forming cartels or monopolies and restrictive business practices (such as illegal price fixing among a few suppliers or tender candidates). They are operated in most industrialised countries and at the EU level. Efforts for binding rules at international level have so far failed (e.g. in UNCTAD), due to business pressure. The lack of international competition rules seems inconsistent with the WTO's aim of guaranteeing free trade in a world market, and the growing number and size of TNCs.

In 1992 the then EC Commissioner for Competition Policy rules, Leon Brittan, advanced the argument for multilateral competition rules, at the World Economic Forum (another informal and exclusive annual meeting for top political and business leaders in Davos, Switzerland). He proposed a clear set of common rules agreed internationally with effective enforcement under the rule of law, and without the aim of replacing national laws. He proposed the then GATT as the best forum to develop such rules in the areas of:

- ☐ subsidies and state aid
- ☐ cartels and other 'restrictive' arrangements
- ☐ mergers
- ☐ (perhaps) national monopolies and public monopolies.

During the signature ceremony of the Uruguay Round Agreements and the WTO, he and several developing countries expressed interest in starting to integrate multilateral competition rules in the WTO. The US and the business lobby was much less enthusiastic for an international approach to the issue.

In 1996, the EC formally submitted a paper to the EU members in favour of a framework for competition policy in the WTO, but it raised little response from governments who were not enthusiastic as it had not been supported by the private sector. The non-paper submitted by the EC to the WTO in 1996:

- ☐ seemed to reflect business concerns by emphasising the proposal for all WTO members to make a commitment to adopt effective domestic

competition rules, and enforcement structures. This would prevent national anti-competitive practices from hindering foreign companies to enter a (foreign) market (market access argument);

- ❑ included developing some common competition rules or principles to deal with, and start cooperation among authorities on, anti-competitive practices with an international dimension.

Before the agreed deadline of the year 2000, and due to manoeuvring by the EU, the 1996 WTO Ministerial Conference has established WTO a working group on competition policy rules.

The European TNCs, through the ERT, stated that they would like to include competition policy in the WTO to be able to address structural impediments to market access. In the WTO, other countries also used the discussions on competition law to tackle market access issues, such as anti-dumping rules.

The coming months could indicate to what extent the business interests will prevail in the WTO discussions. It remains to be seen how the legitimate concerns of governments over world-wide anti-competitive practices, and growing concentration through mergers and alliances will be treated.

Negotiations for accession of new members

Member countries of the WTO are still on the increase with 34 countries in the process of joining. Among these are small developing countries as well as China and Russia who are increasingly major players in international trade.

The new applicants must negotiate with the WTO and its existing Members as to how they will adapt their legislation to WTO rules, and where tariffs and trade barriers will be removed. Proceedings of negotiations are not transparent and reports of the formal and informal meetings for the entrance of China to the WTO suggest that the EU and US dominate the negotiations. A consultant reportedly witnessed, during several accession negotiations, TNCs lobbying for various measures. Those who had already invested in a given country argued for protective height tariff rates while a TNC interested in exporting to that country rather argued for bringing down tariff rates.

striking example of how business interests enter the accession negotiations provided by the market access strategy of the European Union. In order to sharpen up its ability to prise open the world markets that matter most to European business, to create jobs and make European business survive in the long term, the EC has established a computer link with business. Companies can electronically or otherwise report their complaints about market access problems in other countries. The EC will follow up that complaint and investigate how the trade barrier can best be done away with. The EC can use existing WTO rules and procedures, push for new tariff reductions or new WTO trade rules, but if it concerns a country that is applying for WTO membership, the EU will try to prise open that market during its accession negotiations. It does not seem to be the case that the EC weighs development interests against that of its own business.

Similarly, the US Department of Commerce has a Trade complaint hotline.

Settling disputes

As TNCs are involved in most world trade and many have been active in promoting WTO rules to their interest, they are, of course also involved in the WTO's dispute settlements and are using WTO procedures to protect the rights of trade they have gained. The WTO sanction mechanism allows action to be taken against those authorities and companies that breach WTO rules. This provides certainty for businesses and TNCs when they are trading and investing abroad.

In the WTO, only member states can be brought before a dispute panel. This means that a company, which is displaced or disadvantaged by a foreign company action or a government rule that is not consistent with the WTO, must first convince its government before the matter can be taken at the WTO. Similarly, if a company breaches a rule of the WTO, its host government must act in its defence and answer the complaint of the prosecuting government. Where a good relationship exists between a company and the national authority, this may increase the likelihood that the authority takes up the case. The financial might and legal expertise of TNCs would be a great advantage in supporting the expense of a, sometimes less than wealthy, national authority acting on behalf of a corporation.



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278

Examples in dispute settlement cases where TNCs have played a major role are:

- ❑ the US complaint against India's failure to implement different provisions under the WTO TRIPS Agreement. The US acted on behalf of the Pharmaceutical Research and Manufacturers of America (PhRMA) which represents the US' leading pharmaceutical and biotechnology TNCs.
- ❑ the US complaint against the EU's banana regime that gives preferential access for bananas from Caribbean and African countries (under the Lome Convention). Although the US does not produce bananas, it brought the EU before the WTO panel under pressure, and with financial support from, American companies like Chiquita Brands International that owns plantations in Central and South America, and a large portion of the banana trade. Chiquita also supported Guatemala, Honduras and Mexico to join the legal action.
- ❑ the EU and Japan complained against the US about the Massachusetts statute barring government purchases from companies doing business in Burma because it violates the WTO's non-discrimination rules on government purchases. However, at stake were billions of dollars in contracts with Massachusetts government agencies; after the Burma law took effect in 1996, Apple computer Inc., Eastman Kodak Co and Philips Electronics NV pulled out of the country citing the law. But many other companies, including from the EU and Japan, remained on the black list, e.g. Son Corp., Toshiba Corp., Siemens AG, Total SA and Unilever NV.
- ❑ the US complaint against Japanese measures that restricted imported photographic films and paper was actually a battle between Kodak and Fuji for the Japanese market. It is interesting to note that the chief executive officer of Eastman Kodak Company is member of the US President's Advisory Committee for Trade Policy and Negotiations (ACTPN).

Challenges in bio-technology

The WTO has played a vital role in serving TNC interests in intellectual property rights through the Agreement on Trade Related Intellectual Property Rights (TRIPs). By providing a mechanism protecting patents issued in one country to cover all WTO member countries (after the year 2000), the WTO is redressing the alleged loss of billions of dollars by industry, but this might be at the expense of the poor.

The continued interest in TRIPs by TNCs is reflected in statements made by their special organisations described above.

- The WTO Implementation Report that the US President's Advisory Committee for Trade Policy and Negotiations (ACTPN) issued in preparation for the first WTO Ministerial Conference (1996) contained a chapter on Trade-Related Intellectual Property Rights. Among others it recommended that the US Government:
 - ❑ takes all steps possible to accelerate implementation of TRIPs agreements by developing countries, for instance by providing technical and educational assistance to demonstrate the benefits of strong intellectual property protection and enforcement;
 - ❑ ensures patent protection for bio-tech inventions;
 - ❑ ensures that the activities of WTO's Trade and Environment Committee do not weaken the TRIPs Agreement.
- The Transatlantic Business Dialogue (TABD) has a working group that deals with agricultural bio-technology. In its statement before the Singapore Ministerial Conference it argued for:
 - ❑ efforts to strengthen patent protection, especially for biotechnology;
 - ❑ measures to ensure countries not entitled to transition periods in the WTO, including newly industrialising countries, immediately implement their TRIPS obligations;
 - ❑ accelerated implementation of TRIPS obligations by other countries;
 - ❑ use of the WTO dispute settlement process to ensure full implementation of TRIPS obligations;

- ❑ the US Administration and the European Commission to organise a conference within six months to report on progress made with respect to these TABD recommendations and to discuss future action.
- UNICE clearly stated its opposition to weakening the TRIPs agreement for environmental reasons (May 1996, September 1997).
- The US Council for International Business expressed its fears that developing countries will not be ready to implement TRIPs by January 2000 (April 1998).
- The International Chamber of Commerce is creating an annual Geneva Business Dialogue due to start on 23-24 September 1998. Participants include the highest ranking political decision-makers of international organisations such as the WTO and heads of TNCs so that business experiences and expertise is channelled into the decision-making process for the global economy. Topics will include:
 - ❑ effective protection of intellectual property;
 - ❑ the claim that bio-technological inventions cannot be subject to patents because it would be tantamount to patenting life itself;
 - ❑ to what extent do countries from which biological raw materials of industrial inventions originate have a claim on them.

The first issues mentioned in the statements have been reflected in US policy. For instance, in the WTO the US has argued strongly for accelerated implementation of TRIPs, and some countries have agreed to do so. It would be interesting to know to what extent the US has linked this with its aggressive bilateral policy towards legalising IPR protection in developing countries.

The latter arguments about patenting of life forms and lack of compensation for communities reflect some of the criticisms that have been growing around IPRs and bio-technology. Much of the controversy, raised by the global reach provided by TRIPs, has not been dealt with in the WTO. To illustrate some practices by TNCs that have raised concern, examples are used here that have been observed from Monsanto:

- ❑ Big names as Monsanto are part of the US Intellectual Property Committee during negotiations and the US President's Advisory Committee for Trade Policy and Negotiations. A representative of Monsanto chairs the work of the TABD on agricultural bio-tech in the working group on Standards and Regulatory Policy, and is part of the ICC (not yet of the Geneva Business Dialogue). Many groups who critically analysed TRIPs do not have such access to political and WTO decision-makers.
- ❑ IPRs allow companies a monopoly of seed ownership and other bio-tech products. These companies also behave in a monopolistic way in global sales and distribution, e.g. Monsanto owns the second largest cotton seed company in the world (Stoneville Pedigreed) and is a major shareholder in the world's largest cotton seed company (Delta & Pineland).
- ❑ Restrictive business practices occur in cases such as farmers who use Monsanto's Roundup Ready soybean seeds also having to use Monsanto's pesticides and allow inspections of their fields.
- ❑ Genetically engineered soybeans were illegally planted in Brazil allegedly from a Argentine subsidiary of Monsanto.
- ❑ Monsanto made 22% more profit in 1997 with 22% fewer workers compared to 1996.
- ❑ consumers in Europe opposed the introduction and import of genetically engineered products such as soybeans produced by Monsanto.

Many other issues still remain undiscussed. The fear is that because TNCs are so closely linked to WTO decision-makers, especially those in US and the EU, these issues will hardly be raised and dealt with properly in the WTO, which has more enforcement power than other organisations dealing with agri-biotech issues (e.g. FAO, WIPO).

RECOMMENDATIONS

UNICE wrote in its statement about TRIPs and the environment (September 1997) that it was dismayed that a number of NGOs seem[ed] to oppose effective protection of intellectual property rights on environmental grounds and considered the TRIPs agreement to be one of the most fundamental and important results of the Uruguay Round.

Similarly, on globalisation which the WTO is dedicated to support through trade and investment liberalisation, the International Chamber of Commerce (ICC) declared to the leaders of the G7 in 1997: [globalisation] is increasingly perceived in the public mind more as a threat rather than an opportunity. The misconceptions that are growing around globalisation must be combatted. [T]here is an urgent need for both governments and business to do much more to explain to the public at large the benefits and opportunities that will flow from globalisation. The ICC continued by declaring that globalisation was a business driven phenomenon and that business was the natural partner of governments to design the multilateral rules for the worldwide market place. In March 1998, the EU Ministers decided (General Council) that they wanted to give a strong message to public opinion explaining the advantages and benefits of further liberalising trade.

At the same time, business is aggressively asking for a special relationship with the WTO. The Chair of the ICC is quoted as saying that business wants neither to be the secret girlfriend of the WTO, nor should the ICC have to enter the WTO through the servant's entrance.

However, TNCs and business have already much more access to WTO decision-makers than citizen groups and NGOs. Citizens and non-profit organisations have very few ways to express and explain their concerns and experiences to WTO decision-makers up to the highest level. Current WTO arrangements that give NGOs only indirect access to WTO decision-makers, and that allow distribution of documents only after decisions are taken, further undermine NGOs and citizens' small capacity to deal with WTO issues.

In order to seriously assess what the impact is of the WTO agreements such as TRIPs as well as the globalisation process that the WTO accelerates, the WTO

needs to urgently improve transparency about its decision-making process as well as mechanisms that allow citizens and NGOs to have their concerns taken into account.

New analysis

The WTO could work toward redressing the lack of analysis and the bias towards business interests prior to the start of further negotiations by:

- ❑ in the WTO Trade Policy Review Reports about its member states, supplying information on profits and losses of major import and export companies, company employment figures, wages of workers and CEOs, and shareholder revenues.
- ❑ Detailing, in the WTO's annual report on trade developments, the five to ten most important traders in each sector of world trade, their individual share of world trade and sales figures in order to clarify current non-confirmed figures of concentration in different sectors; in addition, provide information on pre- and post tax profits as well as employment by those traders (some of this information has already featured in the World Investment Reports produced by UNCTAD).
- ❑ collecting information, before negotiations start on agriculture, from a wide range of stakeholders and independent analysts about price formation, prices paid to farmers, evolution of costs for inputs to be paid by farmers, food security and nutritious status in all member states, food quality and prices paid by consumers.
- ❑ in any review of TRIPs, fully taking into account concerns expressed by farmers groups and NGOs, related to transfer of technology, effects on bio-diversity, farming by poor farmers and communities, access to seeds, bio-piracy, consequences of patenting of life forms and the question whether the WTO is the right place to deal with IPRs and TRIPs, especially in the field of agriculture, life forms and medicines.

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